

IN THE MATTER OF AN ARBITRATION

BETWEEN:

ONTARIO PUBLIC SERVICE STAFF UNION  
(The "Union")

-and-

ONTARIO PUBLIC SERVICE EMPLOYEES UNION  
(The "Employer")

CONCERNING ORGANIZING SECRETARY WAGE RATE GRIEVANCES

Ian Anderson, Sole Arbitrator

For the Union:

Cynthia Watson, Counsel

For the Employer:

Andrew Shaw, Counsel



Hearing held in Toronto, Ontario, June 15, 2015.

Award issued June 26, 2015.

File 10: 841761  
Folder 10: 10226RR-5  
Rel 10: 11258

1. The Union has filed various grievances alleging that the Employer has failed to provide incumbents of the "Secretary (Organizing)" position the wage rate set out in the applicable Collective Agreements prior to July 1, 2014. The Union seeks orders directing the Employer to pay all wages lost as a result. The Employer resists the grievances on the basis of estoppel. In the alternative, the Employer takes the position that any remedial orders on behalf of individual grievors are limited to the period set out in the collective agreement for filing a grievance. The Union asserts that certain facts upon which the Employer would seek to rely for the purposes of the estoppel argument are inadmissible. In the alternative, the Union asserts that an estoppel cannot be set up in the circumstances of this case.
2. The particulars of the Union's grievances are straight forward and not in dispute. They are limited to the following. Four successive collective agreements covering the period July 1, 2002 until June 30, 2014 provided that the Secretary (Organizing) position would be paid at "Range 7" of the applicable salary grid. In fact, incumbents were paid at Range 5, a lower range.
3. The parties have agreed to the following procedure for the determination of their dispute:
  - (i) On or before July 15, 2015, the Employer will provide the Union with full particulars and production with respect to its estoppel argument. This will include the facts that the Employer intends to prove and the evidence that it intends to rely upon. A copy of the particulars and production is to be filed with me at the same time.
  - (ii) On or before August 7, 2015, the Union is to advise the Employer in writing if it takes the position that any of the evidence relied upon by the Employer for its estoppel argument is inadmissible. If the Union asserts that any of the evidence relied upon by the Employer is inadmissible, it is to provide a brief statement of its reasons in support of its position, including reference to applicable case law. A copy of this statement is to be filed with me at the same time. For clarity, the Union may augment its reasons and case law in the hearing described in paragraph (iv) below.
  - (iii) If the Union asserts that any of the evidence relied upon by the Employer is inadmissible, the Employer will have a right of reply wherein it can provide a brief statement responding to the Union's statement of reasons, referencing applicable case law, on or before August 14, 2015. A copy of this statement is to be filed with me at the same time. For clarity, the Employer may augment its reasons and case law in the hearing described in paragraph (iv) below.
  - (iv) A hearing has been scheduled for August 18, 2015. Should the parties be unable to agree on the admissibility of the evidence on which the Employer seeks to rely for the purposes of its estoppel argument, the day will be used for the purposes of hearing full argument on that issue. Should the parties be able to agree, the hearing date may be cancelled or used for some other purpose.
  - (v) Should the parties agree that the evidence on which the Employer seeks to rely for the purposes of its estoppel argument is admissible in whole or in part or should I rule that the evidence is admissible in whole or in part, then:

- (a) On a date to be determined, the Union is to advise the Employer in writing which of the Employer's facts it accepts as being materially correct for the purposes of the estoppel argument and provide full particulars and production to the Employer of any additional facts on which the Union would seek to rely for the purposes of the estoppel argument, as well as the evidence that it seeks to rely upon. Copies shall be filed with me at the same time.
  - (b) On a date to be determined, the Employer shall advise the Union in writing which of the Union's facts it accepts as being materially correct for the purposes of the estoppel argument. A copy shall be filed with me at the same time.
  - (c) Additional hearing dates shall be scheduled as necessary.
- (vi) The procedure outlined herein is without prejudice or precedent to any other matter between the parties.

DATED at TORONTO on June 26, 2015,

"Ian Anderson"  
Ian Anderson  
Arbitrator